SB Civil Writ Petition No.784/2004
Jaiwanti Solanki & Anr. v. State of Raj.& Ors.
Date of Order :: 14th December, 2005

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Vijay Bishnoi, for the petitioners.
Mr. L.R.Upadhyay, Dy.Govt.Advocate.

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The allegation of the petitioners in present writ petition is that respondent No.2 Directorate, Medical & Health Services while making appointment to the post of Nurse Gr.II gave appointment to the respondents No.3 and 4 who stood at lower pedestal in the list prepared according to merit for the purpose of appointment to the post referred above.

A specific averment is made in the writ petition that the petitioner No.1 secured 61.934% and the petitioner No.2 secured 60.77% merit marks, but appointment was not given to them though they are having more marks than respondents No.3 and 4 to whom appointment was accorded, secured only 60.038% and 60.012% marks respectively.

In reply to writ petition the respondents accepted the merit marks position averred in the writ petition, however, justified appointment of the respondents No.3 and 4 on the count that the appointment was given to them against the vacancies reserved for general female category. The relevant portion of the affidavit sworn-in by Ms.Kalpana

Kumari, officer-in-charge of the case while giving justification for the appointment to the respondents No.3 and 4 reads as under:-

> "So far as respondents No.3 and 4 are concerned, they belong to general female category. Therefore, their candidature was considered against the vacancies reserved for general female category. The last candidate belonging to general female category who has been selected, secured 60.012%. The respondent No.3 secured 60.038% marks and respondent No.4 secured 60.012% marks and since their names came in the merit, they have been granted appointed against the vacancies reserved for General Female category."

The stand taken by the respondents as above is absolutely misconceived and is absolutely erroneous as no reservation is prescribed for general categories. The reservation prescribed is only for socially and educationally backward categories, those are, Scheduled Castes, Scheduled Tribes and OBCs. It is well settled that if a person belonging to reserved categories stands in general merit then his/her candidature is required to be considered in accordance with general merit. Appointment in accordance with general merit cannot be denied to a person belonging to a Scheduled Castes, Scheduled Tribes or OBCs, otherwise that shall be contrary to the spirit of the object behind providing reservation to those

categories. The authorities empowered to implement reservation provided for Scheduled Castes, Scheduled Tribes and OBCs must understand that the percentage to the extent reservation is prescribed is minimum quota required to be filled in. It should always be kept in mind that the reservation policy is framed with an object to uplift social and educational status of the underprivileged classes of our society. The interpretation put forth in present case is totally contrary to the object for providing reservation of OBCs, while making appointments as it restricts appointment to the extent of reservation prescribed, as if by prescribing a maximum limit is prescribed with regard to the categories for benefit of whom reservation is in prevalence.

In the present case the petitioners belong to OBCs but they are having marks sufficient to be considered for appointment as a candidate belonging to general female category, therefore, it was obligatory for the respondents to consider their appointment in that category and to appoint them as Nurse Gr.II, if they are otherwise eligible.

In view of whatever discussed above the writ petition deserves acceptance. The same, therefore, is allowed. The respondents are directed to consider the candidature of the petitioners for the purpose of appointment according to their general merit and if

appointment is given to any person having marks less than the petitioners in that category, the appointment be accorded to the petitioners also, if they are not otherwise ineligible.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.